

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3079 of 1988

WITH

SPECIAL CIVIL APPLICATION NO.3115 OF 1988

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SPECIAL CIVIL APPLICATION NO.3116 OF 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTIBHAI J MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR DU SHAH for Petitioners

MR MUKESH PATEL, APP for respondent Nos.1 to 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 10/03/2000

ORAL JUDGEMENT

In this group of petitions filed under Article 226 of the Constitution of India, petitioners, who are manufacturing medicinal and toilet preparation at G.I.D.C. Chitra, Bhavnagar, and also holding requisite license from the concerned authority for a period from 22-11-87 to 31-12-88 for manufacturing the said preparation of the Dill water etc., have brought under challenge the order dated 22-3-88, issued by the Director of Prohibition and Excise, Gujarat State, Ahmedabad, purported to have been passed in exercise of powers conferred under Section 6-A of the Bombay Prohibition Act, in pursuance of the advise of the Board of Expert, Government of Gujarat, determining that the preparation mentioned in the schedule attached below that order is fit for use as intoxicating liquor and medicine. That the said order is Annexure "C" to the petition.

2. Petitioners have prayed for relief of declaration that impugned order is passed in violation of natural justice and it being unconstitutional, arbitrary, discriminatory and in violation of Article 19 1 (g) of the Constitution of India as it prevents the petitioners from carrying on their business or trade, it be quashed and set aside.

3. At the time of hearing of these petitions, learned advocate Mr. D.U.Shah drew my attention to the fact that all the petitioners were issued license to manufacture Dill water for a period from 22-11-87 to 31-12-88 and at the time of issuance of the Rule on the petitions, this Court has granted interim relief and thereby the petitioners were permitted to dispose of their stock of Dill water, etc., outside the territory of Gujarat State within a period of two months thereof. Therefore, since, the license which was granted for a period of one year has expired on 31-12-88, if the petitioners want to obtain a further license, they are supposed to apply before the concerned authority. At present learned counsel for the petitioners is not able to point out whether petitioners have again applied for the license after 31-12-88.

4. Learned A.G.P. Mr. Mukesh Patel relying upon the impugned order drew the attention of this Court to the fact that by virtue of the said order, Dill water preparation has been declared fit for use as intoxicating liquor and medicine. Therefore, the Government has issued the impugned order. He further states that now the sale of spirituous medicinal preparations declared

fit for use as intoxicating liquor and a medicine under Section 6-A of the Bombay Prohibition Act, 1949, is regularized under the Bombay Spirituous Medicinal Preparation (sale) Rules, 1954 and any person desires to sell spirituous medicinal preparation declared fit for use as intoxicating liquor is required to obtain a licence in form S.M.P.-1 prescribed under Rule 5 of the said Rules.

5. In view of the aforesaid state of affairs, I am of the opinion, that the license to manufacture Dill water which was granted to the petitioners for a period of one year from 22-11-87 to 31-12-88 has been cancelled by the authority by the impugned order dated 22-3-88 and by virtue of the impugned order recorded by this Court, the petitioners were permitted to dispose of the stock of Dill water etc., outside the State of Gujarat within a period of two months thereof and in the absence of any material whether the petitioners have applied after 31-12-88 before the concerned authority as stated by Mr. Mukesh Patel, I think that issue involved in these petitions now does not survive.

6. In view of what is stated hereinabove, I am of the opinion that there is no merits in the petitions which are liable to be rejected and accordingly they are rejected with a clarification that if petitioners want to manufacture Dill water, they may apply before the concerned authorities in prescribed form and the concerned authority shall decide the said application in accordance with law.

7. Rule discharged with no order as to costs.

(A.M.Kapadia, J.)

*mithabhai